

# Ada County Family Violence Court: Shaping the Means to Better the Result

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## I. Introduction

Sheryl Black<sup>1</sup> sits beside her attorney behind a large oak desk in Courtroom 401 of the new Ada County Courthouse in Boise, Idaho, waiting for the judge to enter and begin the proceedings. The new courthouse, constructed as part of the State of Idaho's new vision for the judicial branch of the state government, is a state-of-the-art judicial facility that took ten years to develop and two years to construct. Replacing a worn and outdated courthouse that had been in use for over sixty years, the new Ada County Courthouse is a symbol of a new beginning in the Idaho judicial system.

Along with the development of a new courthouse, the judicial branch of the state of Idaho sought to make changes in the way the courts themselves were operated. They wanted a shift in emphasis from the courts and their procedures to the needs and goals of the customers, parties to both civil and criminal cases, their support structures, the attorneys, the families, the employers, and numerous others.

In keeping with the Idaho Judicial Branch's mission statement to "[p]rovide equal access to justice, promote excellence in service, and

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1. This individual is fictional and representative of various individual parties who have been a part of the new Family Violence Court in Ada County.

increase the public's trust and confidence in the Idaho courts,"<sup>2</sup> the Idaho court system embarked on a pilot program that is emerging nationwide as a possible solution to one of the most difficult and unwanted challenges of a state court system, handling domestic violence cases. These cases and the myriad of problems and procedures associated with them, weigh down families and stymie courts in their efforts to solve domestic problems fairly and effectively while allowing family members to move on. The Ada County Family Violence Court, which began hearing cases in July of 2002, is a work in progress. It is a type of court, however, that has been finding success across the country as jurisdictions shift their focus from the procedures of the court to the needs of the family. The purpose of this court is officially twofold: first, to provide a safer environment for families at risk, and second to provide a more effective interface with the judicial system for families involved in domestic violence matters.

After a few minutes of waiting, Mrs. Black, her attorney, and the rest of the courtroom rise as the judge enters and takes the bench. The judge bids the courtroom seated and pauses a few seconds to review the folders of information in front of him. This is, by design of the court, a case with which the judge is very familiar. He has already seen Sheryl Black and her husband William several times in formal courtroom settings, adjudicating issues including criminal complaints arising from Mrs. Black's repeated claims that her husband battered her, requests for protective orders, and divorce proceedings. Today's hearing concerns an initial award of child custody pending the divorce. The Blacks have three children, a daughter, age thirteen, and two sons, ages ten and seven. Today's legal battle will result in some final arrangement of custody and an order for child support.<sup>3</sup> To further complicate the case, Mr. Black has an issue with alcohol and the child welfare authorities are involved because of the domestic violence in the home.

Even then when these immediate issues become settled, typically, there will be motions for modification in the future. For each one of these issues, only one judge will hear all the matters under the design of the Family Violence Court.

Prior to starting with the Family Violence Court, the judge had served nineteen years as a Magistrate. Though the primary emphasis of domestic violence courts is the protection of spouse or partner victims, experts argue that the cornerstone in any domestic violence court must be victim

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2. See [www.isc.idaho.gov/mission.htm](http://www.isc.idaho.gov/mission.htm).

3. Idaho law imposes a presumption in favor of joint custody that may be rebutted by showing that custody is not in the best interests of the child. IDAHO CODE § 32-717 (Michie 2004).

and child safety.<sup>4</sup> The judge was chosen for the Family Violence Court position particularly because of his past work in family law, and more particularly in the area of child abuse prevention.<sup>5</sup>

In dealing with the Blacks and other similar families, the Ada County Family Violence Court hopes this idea will prove to be effective and cost-efficient in handling domestic violence cases and the various legal matters typically spawned from them. More important, however, is the ultimate goal of the court to focus on and better serve the families themselves.

## II. The Traditional Relationship Between Courts And Domestic Violence Victims

### A. *The History and Cost of Domestic Violence*

The emergence of domestic violence as a state and national concern is a fairly recent phenomenon occurring only in the past two to three decades. Courts initially afforded specialized protection to domestic violence victims only after a long struggle by feminist and family interest groups to focus attention on the problem of spousal and partner abuse.<sup>6</sup> Prior to this gradual shift in attention, legislatures, law enforcement communities and the courts traditionally took a hands-off approach, deferring to the privacy of the family and the prerogative of the husband to deal with his wife as he saw fit.<sup>7</sup> Husbands typically had immunity from legal sanctions when it came to spousal abuse so long as that abuse was justified as a correctional means or could be dismissed as a private dispute.<sup>8</sup>

Once the legislatures acted on the issue of domestic violence, enforcement of these laws became the responsibility of the law enforcement community, which many critics feel has been slow and inconsistent in responding.<sup>9</sup> Studies show that “in domestic abuse situations, there is ‘still

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4. EMILY SACK, CREATING A DOMESTIC VIOLENCE COURT: GUIDELINES AND BEST PRACTICES 5 (2002).

5. This particular judge has served on numerous committees and task forces that focus on at risk children and families, and he has received several major awards for his work related to the prevention of child abuse. Additionally, this judge recognized that domestic violence is not a sought-after niche of either the legal profession or the judiciary.

6. Randal B. Fritzler & Lenore M.J. Simon, *The Development of a Specialized Domestic Violence Court in Vancouver, Washington Utilizing Innovative Judicial Paradigms*, 69 UMKC L. REV. 139, 139-140 (2000). See also Judith S. Kaye & Susan K. Knipps, *Judicial Response to Domestic Violence: The Case for a Problem Solving Approach*, 27 W. ST. U. L. REV. 1, 3 (2000).

7. See Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORD. L. REV. 1285, 1288 (2000).

8. *Id. supra* note 7, *Gender Bias in the Courts of the Commonwealth Final Report*, 7 WM. & MARY J. OF WOMEN & L. 705, 750-51 (2001).

9. Tsai, *supra* note 7, at 1294. See also Isabel M. Medina, *Justifying Integration of Domestic Violence Throughout the Law School Curriculum: An Introduction to the Symposium*, 47 LOY. L. REV. 1, 5 (2001) (declaring that “the criminal justice system as a whole has yet to

persistent bias against the use of arrest,' and the more closely related the two parties are, the less likely officers are to arrest."<sup>10</sup> Police officers tend to see domestic violence victims as "unreliable and unpredictable" and departmental pressures on high conviction-to-arrest ratios tend to make police officers see domestic violence cases as undermining this goal due to their high dismissal rate.<sup>11</sup> Arrest rates for domestic violence cases may be as low as one for every one hundred domestic violence assaults.<sup>12</sup> Due to the frequent withdrawal of victims from prosecutions and the difficulty of successful prosecution without them, prosecutors often make domestic violence cases low priority.<sup>13</sup>

However, legislative emphasis in the 1990s resulted in "more stringent policies on arrest, prosecution, and incarceration of perpetrators" which "were instrumental in shaping society's perception of domestic violence as a crime."<sup>14</sup> Though still a problem of "tsunami proportions,"<sup>15</sup> domestic violence has come to the forefront of family law matters, and courts are charged with the daunting task of curbing this trend.

Recent statistics on domestic violence show that the problem is growing and is leaving wide and far-reaching destruction in its wake. In the United States an estimated one to four million women a year are victims of violence committed by their partners,<sup>16</sup> and that over one million women seek medical assistance annually for injuries sustained from husbands or partners.<sup>17</sup> Between two and four thousand women die each year from domestic violence.<sup>18</sup> Data also shows that of all violence committed against women annually, over one-fourth is perpetrated by a domestic partner.<sup>19</sup>

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successfully address the problems of domestic violence").

10. Tsai, *supra* note 7 (citing EVE S. BUZAWA & CARL G. BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 51 (1996)).

11. *Id.*

12. *United States v. Morrison*, 529 U.S. 598, 632 (2000) (Souter, J., dissenting) (citing D. G. Dutton, *Profiling of Wife Assaulters: Preliminary Evidence for Trimodal Analysis*, 3 VIOLENCE AND VICTIMS 5, 30 (1988) (also found in S.Rep. No. 101-545, at 38)).

13. Tsai, *supra* note 7, at 1293.

14. *Id.* at 1291.

15. Kaye & Knipps, *supra* note 6, at 3.

16. ANN JONES, NEXT TIME, SHE'LL BE DEAD: BATTERING & HOW TO STOP IT 87 (1994), cited in Erin Meehan Richmond, Note: *The Interface of Poverty and Violence Against Women: How Federal and State Welfare Reform Can Best Respond*, 35 NEW ENG. L. REV. 569 n.3 (2001). See also *United States v. Morrison*, 529 U.S. at 632 (Souter, J., dissenting).

17. *Morrison*, 529 U.S. at 632 (Souter, J. dissenting) (citing Evan Stark & Anne H. Flitcraft, *Medical Therapy as Repression: The Case of the Battered Woman*, HEALTH & MEDICINE (Summer/Fall 1982)) (also cited in S. Rep. No. 101-545, at 37).

18. *Morrison*, 529 U.S. at 632 (Souter, J. dissenting) (citing ELIZABETH SCHNEIDER, LEGAL REFORM EFFORTS FOR BATTERED WOMEN: PAST, PRESENT, AND FUTURE (July 1990) (also cited in S.Rep. No. 101-545, at 36)).

19. Tsai, *supra* note 7, at 1292.

Additionally, a 1997 Bureau of Justice Statistics Special Report found that 31% of homicides in which the victim and the assailant knew each other, involved women killed by spouses or partners.<sup>20</sup> Estimates show that this country spend[s] \$5 to \$10 billion a year on health care, criminal justice, and other social costs of domestic violence.<sup>21</sup> “[t]he most rapid growth in domestic relations case loads is occurring in domestic violence filings. Between 1993 and 1995, eighteen of thirty-two states with three year filing figures reported an increase of 20% or more.”<sup>22</sup>

### *B. The Traditional Court Response to Domestic Violence*

Traditional court responses to domestic violence have often come in the form of protection orders and, sometimes, prosecutions of perpetrators—most often the male spouse or partner. Actual arrests however, and prosecutions of domestic violence perpetrators are not common.<sup>23</sup> Protective orders have come under sharp criticism as being largely ineffective in protecting victims of abuse because they are commonly violated,<sup>24</sup> and fail to protect spouses and partners of more violent offenders.<sup>25</sup>

With the focus on domestic violence as a problem and the development of techniques to combat it, courts have turned to domestic violence-specific remedies and procedures, including victim assistance centers, state-funded shelters, batterer intervention programs, and prosecution teams with domestic violence specialties.<sup>26</sup> The disjointed approach with which courts have traditionally faced domestic violence cases has proven ineffective at stopping violence and protecting victims from repeated violence.

The key parties involved in almost every domestic violence case are the

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20. *Id.* at 1293.

21. Morrison, 529 U.S. at 632 (Souter, J. dissenting) (citing Sen. Joseph Biden, *Domestic Violence: A Crime, Not a Quarrel*, TRIAL 56 (June 1993)) (also cited in S. Rep. No. 103-138, at 41).

22. NATIONAL CENTER FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, 1995: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT (1996), cited in *Domestic Violence is a Serious, Widespread Social Problem in America: The Facts*, end abuse: Family Violence Prevention Fund, at <http://endabuse.org/programs/printable/display.php3?DocID=100001> (last visited January 4, 2005).

23. See Angela M. Killian, Comment: *Mandatory Minimum Sentences Coupled With Multi-Facet Interventions: An Effective Response to Domestic Violence*, 6 UDC/DCSL L. REV. 51, 64 (2001) (asserting that “a recent survey revealed that only one fifth of all rapes, a quarter of all physical assaults, and half of all stalkings committed against intimate partners are reported to the police”).

24. Tsai, *supra* note 7, at 1292 (indicating that in one study, 60% of protective orders were violated within a year, and in another study 50% were violated within two years).

25. *Id.* at 1292 (showing one study that found that 17% of victims killed in domestic cases had obtained protective orders prior to their deaths).

26. *Id.* at 1290.

victim(s) (who can include children), the batterer, the police, the prosecutors, the judge, the defense attorneys, victim advocates, probation officers, corrections personnel, and counselors.<sup>27</sup> The ability of each of these parties to work with the others determines, in large part, the success of the court's efforts in domestic violence cases. Lack of communication between the parties will likely lead to cases "slip[ping] between the cracks—and that [means] that battering will continue, sometimes with tragic results."<sup>28</sup> The problem with separate participants neglecting their involvement is that "individual players in the system may see little point in improving their performance when others do not. And when tragedies occur, fragmentation means that institutional responsibility is easily diffused, misdirected or just ignored."<sup>29</sup> Central coordination among all domestic violence case participants has largely been lacking in the past. Providing coordination of resources is foundational goal of model domestic violence courts.

Traditional judicial approaches focused on the perpetrator, losing sight of the victim. Attempts by the courts to crack down on offenders were often negated because courts and law enforcement failed to consider the increased volatility in the batterer caused by prosecution. Spouses or partners who turned to the court for help often found the situation at home worsened after the court intervention:

The legislative and judicial attempts to bolster the response of individual system components, including dramatically increasing arrests through implementation of mandatory arrest policies, may have placed battered women in more jeopardy as they were encouraged to seek legal remedies when systemic response was uneven or focused solely on offender sanctions.<sup>30</sup>

Statistics abound showing repeat and increased violence in the relationship once the victim has sought refuge in the law against the batterer.<sup>31</sup> Consequently, protecting and assisting the victim has become a core value of many domestic violence court models.<sup>32</sup> A final criticism of traditional court approaches to domestic violence has been the preference of judicial economy over the needs of the victim. As Betsy Tsai observes:

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27. Kaye & Knipps, *supra* note 6, at 5.

28. *Id.* See also Medina, *supra* note 9, at 5 (asserting that a major problem with domestic violence in the courts is that "[a]busers are not uniformly and consistently aggressively prosecuted, and too many times avoid the criminal and financial consequences of their abuse").

29. *Id.*

30. Fritzler, *supra* note 6, at 146.

31. See notes 23-25 *supra*.

32. See Sack, *supra* note 4; Julia Weber, *Courts Responding to Communities: Domestic Violence Courts*, 2 J. CENTER FOR FAMILIES, CHILD. & CTS. 23, 26 (2000) (stating that "[t]he movement to end domestic violence has consistently advocated adherence to two central principles of intervention: (1) enhance victim safety and (2) ensure batterer accountability").

Large numbers of crimes, including those of domestic violence, overwhelm the criminal courts. . . . In order to maintain judicial efficiency in such an environment, judges must review a great number of cases in a very limited amount of time. Judges who are able to move cases along quickly are therefore highly regarded. Domestic violence, however, is an extremely complex matter, involving issues of family dynamics and emotional relationships between the parties that are uncharacteristic of other crimes. These special features of domestic abuse cases require additional time and attention, as they often complicate otherwise straightforward situations. cursory treatment of these cases, therefore fails to adequately address the intricacies of the underlying problems in domestic violence cases.<sup>33</sup>

The pressures placed upon courts to handle cases quickly contravene the essential time requirements of domestic violence cases. As such, a model domestic violence court has to find ways to spend adequate time to deal with each case effectively while at the same time efficiently managing many such cases.

### III. Constructing a Domestic Violence Court

#### *A. The Therapeutic Concept*

As outlined above, the inability of courts to deal effectively with domestic violence issues has gradually led to a crisis point, prompting scholars, advocates, counselors, and courts to consider new and alternative ideas to deal with the growing concern. One such approach is the application of the therapeutic concept to the function the law. This concept, originally began as a movement in the mental health arena, established as its underlying principle that “law is a social force that has inevitable (if unintended) consequences for the mental health and psychological functioning of those it affects. . . . ‘Therapeutic’ is defined very broadly to encompass any effects that improve the psychological, physical, or emotional health of a person.”<sup>34</sup> Or, in other words, “[t]herapeutic jurisprudence is the study of the law’s healing potential.”<sup>35</sup>

Where courts have traditionally been perceived as fortresses guarded from the layperson by complex procedures, inaccessibility, and implicit intimidation, one of the first steps in opening up the law to therapeutic influence is to consider what aspects of the law impact negatively on the participants in the system.

In order to accomplish this goal (of increasing therapeutic effects of the law), therapeutic jurisprudence proposes examination of the law’s effect on

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33. Tsai, *supra* note 7, at 1295.

34. *Id.*

35. Bruce J. Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33 (2000).

the mental and physical health of society through a social science lens. . . . This process may help to determine whether certain laws are accomplishing the public policy purposes for which they were enacted. For example, issues such as “sentencing, offender rehabilitation, and deterrence” involve psychological and social components, making therapeutic jurisprudence particularly appropriate in these areas. Examining the therapeutic and antitherapeutic effects of the law in this interdisciplinary manner combines the “knowledge, theories, and insights of . . . [different] disciplines [to] help shape the development of the law.”<sup>36</sup>

The application of the therapeutic concept to domestic violence does not involve changing existing laws. Instead, the intent of the therapeutic concept is that “the law can benefit from incorporating the knowledge and insight that the field of mental health, as well as other relevant disciplines, may provide,” including “consideration of alternative legal arrangements that might produce more functional behavior,” such as court-mandated batterer intervention programs as a sentencing option.<sup>37</sup>

One question that arises as to domestic violence and the application of the therapeutic concept is whether intimate (domestic) violence should be treated differently than stranger violence by the court system. While there are obvious deleterious effects of violence on all victims—known or unknown to the assailant—there are certain distinctions inherent in domestic violence that warrant special consideration and special treatment.

First, whereas stranger violence towards a given victim is typically a one-time event, domestic violence “tends to be an on-going course of behavior involving both violence and threats of violence.”<sup>38</sup> Where stranger violence typically does not involve continued contact between the offender and the victim after the attack, “the possibility of subsequent abuse is ever present after the police have left the scene [of a domestic violence act], after the defendant has been released from jail if arrested, and even after the issuance of a restraining order.”<sup>39</sup> Second, in addition to physical factors, domestic violence victims suffer from a number of psychological injuries that are normally not found in stranger violence. Victims of domestic violence can develop a form of “learned helplessness,” and often experience symptoms of post-traumatic stress disorder (PTSD).<sup>40</sup> They are also likely to experience “diminished self-esteem and anxiety, depression, and despair,” and are often tragically hindered in

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36. Tsai, *supra* note 7, at 1295 (quoting Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 PSYCHOL. PUB. POL’Y & L. 184, 185 (1997)).

37. Tsai, *supra* note 7, at 1295-96 (quoting Winick, *supra* note 35, at 194).

38. Winick, *supra* note 35, at 37.

39. *Id.* at 37-38.

40. *Id.*



their ability to have future trusting relationships.<sup>41</sup>

Such consequences of domestic violence have been recognized by courts as meriting special attention and treatment based on the therapeutic philosophy of healing. As a consequence of the recognition of this need by courts, the idea of specialized domestic violence courts was born and has since grown into a large-scale experiment in this country which as of 1999 involved over 200 specialized domestic violence courts.<sup>42</sup>

### *B. The History of the Ada County Family Violence Court*

#### 1. EARLY TASK FORCE DEVELOPMENTS

Judicial leadership is crucial to the formation of a specialized domestic violence court. The idea of forming a single court that would assume the responsibility for all cases involving domestic violence had been considered in various circles for quite some time. Several judges, prosecutors, family services personnel, and others had been pushing the idea to the Idaho Supreme Court for many years. What was needed, however, was a judge willing and available to dedicate his or her time and docket to the program and the resources to support the program. When the current Family Violence Court judge retired from full-time status, several key people saw it as the right time to make the court happen, including the Chief Justice of the Idaho Supreme Court, the Administrative Director of the state court system, and the Chief Administrative Judge of Ada County. The court had its birth.

Initial organizational details were crucial because the judge of the Family Violence Court immediately took jurisdiction over the entire domestic violence calendar for Ada County. Issues regarding the scope of authority and jurisdiction as it related to other judges and administrators had to be resolved.

Although a detail, one of the judge's first acts as organizer was to name the court the Ada County Family Violence Court, instead of the domestic violence court. The term Family Violence Court was thought more appropriate to avoid the assumption that the court would deal only with protection orders or divorce cases involving domestic violence. The Family Violence Court jurisdiction was not to be strictly limited to protection orders but also included jurisdiction over criminal cases related to domestic violence. The court's jurisdiction also extends to divorces and child custody cases. Thus the more general name, Family Violence Court, was fitting.

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41. *Id.* at 38-39.

42. Amy Karen *et al.*, *Domestic Violence Courts: What are They and How Should We Manage Them?*, 50 JUV. & FAM. CT. J. 71 (Spring 1999) (quoted in Winick, *supra* note 35, at 39).

## 2. THE WORKING GROUP

The court established an advisory group comprised of important stakeholders simply entitled the “working group.” The working group included the prosecutors, representatives from the public defender’s office, Legal Aid, the probation and parole departments, a few representatives from the treatment community of counselors and providers, the director of the family court services staff, the project director of the Idaho Supreme Court Committee on Children and the Families in the courts, and representatives from the county clerk office.

This working group sat down and hashed through every aspect of the court, putting forth ideas of what each member wanted the court to be and what they thought it could become. They have since met regularly, and have evolved to the point where there are subgroups that meet to discuss and coordinate specialized functions of the court such as paper flow, logistics, compliance, and assessments (regarding probation and parole matters).

## 3. GUIDING VALUES AND PRINCIPLES

One source that guided the initial efforts of the working group in focusing on various tasks was Emily Sack’s manual *Creating A Domestic Violence Court: Guidelines and Best Practices*.<sup>43</sup> Members used this manual to turn an abstract idea of a domestic violence court into a concrete, functioning institution. In her manual, Sack outlines nine values and principles that should guide construction of a domestic violence court. These values are victim and child safety, keeping the victim informed, offender accountability, information sharing and informed decision-making, institutionalized coordination of procedures and services, training and education, judicial leadership, effective use of the judicial system, and accountability of courts and programs.<sup>44</sup> Use of these values and principles was important to the members of the working group in assigning priority to various functions and needs the court was to fulfill.

In addition, Sack establishes eleven components of a domestic violence court, and she associates corresponding values to each component. For example, the component of “Early Access to Advocacy and Services” is driven by the associated values of victim and child safety, keeping the victim informed, effective use of the judicial system, and others. Sack also uses examples of how these various domestic violence courts operate in jurisdictions across the country as “Best Practice” examples.<sup>45</sup> For example,

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43. See *supra* note 4. This manual was published on behalf of the Family Violence Prevention Fund with a grant from the State Justice Institute.

44. *Id.* at 5-8.

45. *Id.* at 9-23.

as part of the “Develop Protocols for Evaluating Dangerousness” component (with associated values of victim and child safety and effective use of the judicial system), Sack uses the example of the Santa Clara County Juvenile Domestic and Family Violence Court’s system of “develop[ing] detailed procedures for providing relevant information to victim advocacy groups in order to enhance outreach to victims,” and adopting “protocols . . . [that] establish clear rules for information sharing, and require that no victim information be released by the victim advocate organizations unless they are granted explicit permission to do so by the victim involved in the case.”<sup>46</sup> These components and “Best Practice” materials provided a wealth of functionality and value-driven ideas around which the working group could arrange and organize their efforts.

#### 4. THE CENTERPIECE

The critical factor of this effort, however, is the judge. It soon became apparent that there has to be a key player, someone to be the authority figure who has the stamp of approval from above. Sack’s manual concurs with this observation:

[w]hen a judge demonstrates his or her commitment to a coordinated community approach to domestic violence prevention and response, buy-in from other court and community members is facilitated. . . . With strong judicial leadership, a court can become known as part of the solution.<sup>47</sup>

### IV. Development of the Structure

#### A. Which Justice System Calendars and Why

The broad range of individuals and groups, both public and private, and the effort to not only garner their input, but also to have them become invested in the success of the Family Violence Court, was a critical element to a successful beginning. However, couched in all discussions by the working group was yet another underlying issue: which justice system components (calendars) would become a functioning part of the new court?

##### 1. CIVIL PROTECTION ORDERS AND FAMILY LAW CALENDARS

When the Family Violence Court formally began, these various court calendars were already functioning in an independent yet somewhat inter-related fashion. The civil domestic violence calendar—dealing primarily with the statutes concerning domestic violence civil protection orders<sup>48</sup>—

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46. *Id.* at 18.

47. *Id.* at 7.

48. Title 39, Chapter 63 of the Idaho Code.

as well as the family law calendar—where violence issues often permeated the substance of divorce, custody, visitation, paternity, and other related cases—were areas that, in our jurisdiction, were quite readily integrated.

This might seem unusual in some other jurisdictions. However, in Ada County, the family law judges had, by assignment, been handling the civil domestic violence calendar since its inception in the late 1980s. The new judge simply assumed the entire civil protection order calendar, and began—through a process of file review by an already existing Family Court Services staff, his clerk, and himself—identifying those civil protection cases with parallel family law proceedings, and was given the authority to have such cases transferred to the new Family Violence Court. Since most such family law cases were high profile, high conflict custody and visitation cases, the family law judges were more than happy to cooperate. In this informal fashion, an FVC calendar of civil domestic violence cases, augmented by family law cases—*i.e.*, those involving the same parties and issues as appeared in the civil protection calendar—naturally and readily evolved, creating a “one family, one judge” court, at least on a limited basis.

Indeed, one of the important principles that guided the creation of the Ada County Family Violence Court, and would be of great import to others who look at this model, is that we simply “began where we were.” The assumption of responsibility for the civil protection order calendar by the new judge was a simple task and began promptly—without undue delay for further study—and from there the inclusion of family law cases flowed naturally. The process was aided by the ongoing development of a protocol by the working group, for identifying and assuming jurisdiction over additional cases. In the first year alone a civil protection order calendar of 550 cases resulted in the transfer of over ninety Family Law cases to the Family Violence Court.

## 2. THE CRIMINAL CALENDAR

By far the most difficult task confronting the FVC was to integrate the criminal cases into the FVC’s docket. This was not unanticipated as the national literature highlights the challenge of integrating civil and criminal matters.<sup>49</sup> Numerous questions were hotly debated in the working group as it met week after week. Prosecutors and the defense bar, especially the public defender, clashed repeatedly over both substantive and procedural issues. These issues are of great import in the legal and judicial world, and have been documented and debated in many other forums.<sup>50</sup> Indeed, some

49. See, *e.g.*, BRENDA K. UEKERT, ET AL., *INTEGRATING CRIMINAL AND CIVIL MATTERS IN FAMILY COURTS: PERFORMANCE AREAS AND RECOMMENDATIONS* (2002).

50. See, *e.g.*, Greg Berman, Comment, *Redefining Criminal Courts: Problem-Solving and the Meaning of Justice*, 41 AM. CRIM. L. REV. 1313 (Summer 2004); Jennifer Thompson,

integrated domestic violence courts embrace principles in the area of “judicial monitoring,” especially during the pre-trial phase of cases. This monitoring of defendants who have not yet been convicted of a criminal offense raises important due process issues and was strongly questioned by defense counsel in our working group.<sup>51</sup> Maintaining a wall of separation between the court’s adjudicative and therapeutic functions for both offenders and victims, is difficult. If appropriate separation cannot be maintained, the objectivity of the court can be compromised.<sup>52</sup>

Procedurally there also were issues of importance. Practically speaking, was it possible to deal with a felony calendar as well as a misdemeanor calendar? At first the different processes through which the different level of cases move seemed to be the most difficult issues. Idaho requires a preliminary hearing for a finding of probable cause before the formal felony arraignment, and further proceedings. No such requirement exists in misdemeanor cases.<sup>53</sup> In the end, trying to run a two-track criminal calendar while trying to integrate the relevant civil cases with one judge seemed, and was, insurmountable with the resources at hand. It could have been accomplished with another judge and more resources including additional legal counsel.

In felony matters the working group concluded that the goals of society were very much focused on conviction and accountability. While these are desirable objectives in felony cases, our working group felt they were not the only goals upon which we wanted to focus. Indeed, avoiding the compromise of the criminal due process rights of an offender while promptly trying to begin the healing of a family torn by violence—sometimes bringing them back together instead of separating them—often seems impossible. The public defender continually objected to a program that presumed guilt of the offender before conviction. The judge agreed. Due process could very well be compromised in requiring evaluations and treatment of offenders who are criminally charged but not yet convicted.<sup>54</sup> Thus for both philosophical and organizational reasons the decision was made by the working group that the FVC would include only a misdemeanor domestic violence calendar.

The court addressed the due process concerns in misdemeanor cases by

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Comment, *Who’s Afraid of Judicial Activism? Reconceptualizing a Traditional Paradigm in the Context of Specialized Domestic Violence Court Programs*, 56 ME. L. REV. 407 (2004).

51. See, e.g., Robyn Mazur & Liberty Aldrich, *What Makes a Domestic Violence Court Work?*, 42 JUDGE’S J. 2 (Spring 2003).

52. Pamela M. Casey & David B. Rottman, *Problem-Solving Courts: Models and Trends*, paper presented at the meeting of the National Center for State Courts, July 8, 2003 (on file with the authors).

53. IDAHO CODE §§19-804, 19-3901 (Michie 2004).

54. See, e.g., SACK, *supra* note 4, at 7; Mazur and Aldrich, *supra* note 51, at 8.

not *requiring* the participation of the defendant/offender in any of the therapeutic aspects of the program prior to conviction. Rather defendant/offenders are allowed to voluntarily participate where both the defendant and his counsel agree. We found that almost one-fourth of the offenders choose to participate in assessments, evaluations and even therapy before being convicted of any crime. Such voluntary participation is common regardless of whether the defendant is eventually convicted as the result of a voluntary guilty plea or after a jury trial. This was a most astounding development, but occurs regularly nevertheless.

### *C. Criminal Calendar Review*

#### 1. ASSIGNMENT OF CRIMINAL CASES

At first the assignment of criminal cases to the FVC was a very difficult task, and a fairly elaborate screening process was designed and put into place to identify those criminal misdemeanor cases that would be assigned to Family Violence Court. The implementation of this process—which primarily identified criminal cases where minor children were in the family structure, and where the criminal case already had a parallel case in the domestic violence civil protection or family law calendar—proved to be somewhat counterproductive.

The biggest problem was delay, and for a court where expeditious handling of domestic violence criminal matters was a primary goal, this delay was not acceptable. In addition the screening process diverted resources from other functions of the court. It was determined that the total number of misdemeanor cases of domestic violence and/or injury to child from all the serviced jurisdictions would be a little over 600 per year—without screening as per the above initial criteria. Hence it was decided that we would attempt to process *all* such criminal cases through the one Family Violence Court.

There have now been many variations of this criminal case flow structure, all designed to accommodate various logistical problems as they inevitably arose. The most critical of the problems was the defense bar's attempt to call the "bluff" of the Family Violence Court on timely jury trial settings. Since the single judge could only allocate a few days a month to actual jury trials, maintaining a not guilty plea (and thus not having jeopardy attach) became a serious source of delay. Moreover, an important due process issue arose because of defendant's right to a speedy trial,<sup>55</sup> and the project stood the risk of collapsing on the issue of timely jury trials.

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55. In Idaho, the trial must commence within six months of an entry of a plea. IDAHO CODE § 19-3501 (Michie 2004).

Eventually FVC developed a policy that allowed the FVC judge to handle all pre-trial and all post-trial matters in all misdemeanor criminal cases involving domestic violence. If, after pre-trial was complete, the matter was still headed for a jury trial, the case was assigned to the dockets of the Criminal Law Judges—for jury trial only, and then, if there was a conviction, the case came back to FVC for post-trial proceedings, especially sentencing and probation supervision.

In addition, the parallel criminal domestic violence cases for which the FVC judge has the civil protection orders and/or family law cases are handled long term by the FVC judge and staff.

## 2. CONSISTENCY OF ORDERS

One of the greatest benefits from this “one judge, one family” concept has been the internal consistency of orders relating to the respective families. It has not been uncommon in the past for a Civil Protection Order (which, in a family with children may include provisions for temporary custody and visitation) to conflict with a “No Contact Order” issued in a criminal proceeding before another judge. Civil Protection and criminal no contact orders could conflict with orders for supervised visitation in a child custody case. When these conflicts are considered it is apparent that one court issuing all orders for a given family has great intrinsic merit.

## 3. PERCEPTION OF JUDICIAL BIAS WITH EXPANDED JURISDICTION

An issue frequently raised in this project is the perception of bias in regard to the one family/one judge model.<sup>56</sup> However in a rural state like Idaho,<sup>57</sup> the judges in the majority of counties have only one or two judges who hear all cases coming before the court. While Ada County enjoys a judicial workload division between juvenile, family law, criminal and other civil cases, such a division does not exist in most of Idaho. The judge assigned to the FVC had, for almost twenty years routinely, and by sheer practicality, functioned as a one judge/one family court, simply because of the very rural population of the county where he sat. True, the judge is occasionally required to recuse himself. Recusal should be exercised by the judge in the judge’s discretion, or at the parties’ request when justified. Still, in most cases so-called bias is truly a matter of perception and not reality. Judges should be expected to hear cases and reach decisions based on the merits of cases, but the additional information the judge might have about a family cannot help but result in better sentencing and also better family law decisions.

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56. UEKERT, ET AL., *supra* note 49, at 16.

57. Many Idaho Counties have only one judge. Few have more than three judges. Ada County is Idaho’s largest county and currently has twenty two judges sitting regularly.

The actual experience of the FVC indicates that the concern about bias is theoretical and not actual. The Ada County bar and the families involved in this project, have rarely moved to disqualify the Family Violence Court judge. Rather they have welcomed and even often requested the global approach of the new court to problem solving in these complex cases involving domestic violence.

#### *D. The Role of Criminal Probation*

Misdemeanor probation officers have had input into the project from its inception. Interestingly, they have sided with the defense bar in ensuring that those who were sentenced to probation had been allowed full due process before being placed under the sometimes severe restrictions of probation. The involvement of misdemeanor probation officers has been important in ensuring that, to the extent possible, the offenders “buy in” to the Family Violence Court concept and become invested in their own success in being reunited with their families. The Director of Ada County Misdemeanor Probation comments on the program as follows:

To date, we have been assigned 252 criminal cases from Family Violence Court. I have personally worked these cases with team players on this project. Our success rate is 91% compliance. This is significantly higher than the other cases we are supervising. There are many significant factors I believe contribute to the success of this program. Hearing cases in a timely matter and sentencing a defendant soon after the crime accelerates intervention and rehabilitation. It is much more effective to address a dysfunctional situation as soon as possible and delaying it can aggravate the situation. Many of these families stay together and keeping a family safe is a priority. One judge to hear all matters enables him to assess and evaluate a family situation more clearly. I am elated with the success of the program and hope Ada County can find ways to keep this court available.<sup>58</sup>

The Probation Director meets as part of the Multi-Disciplinary Team that staffs more intense cases within the FVC project. The Family Violence Court also handles all probation violations for the defendants/offenders, enforcing terms of probation that might include abstinence from alcohol and illegal drugs, certain no contact provisions, offender treatment, etc.

#### *E. Exclusion of Child Protection and Juvenile Calendars*

Those familiar with domestic violence courts will question the exclusion of the Child Protection and the Juvenile calendars from our project.

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58. Interview, Nancy Cladis, Ada County Misdemeanor Probation Director, December 17, 2004. (On file with authors).



While freely acknowledging that it would be ideal if these calendars were included, there were specific and practical reasons why they were excluded from the Ada County Family Violence Court pilot project.

Reverting again to the guiding principle of “we start where we are,” the working group chose not to attempt to include those court calendars because of reasons relating individually to both jurisdictions. The child protection calendar involves an extensive level of cooperation with the Idaho Department of Health and Welfare. The Department’s policies are dictated primarily by federal mandates that impose strict time-lines on these cases and condition continued federal funding for children on compliance with these guidelines. These federal policies impact all aspects of child protection cases court procedures and also confidentiality.<sup>59</sup> While our project works very closely with the Department of Health and Welfare, the integration of the federal rules and procedures were seen to be too cumbersome to accomplish at this phase of the Family Violence Court project. Further, the staff from the Department of Health and Welfare would, of necessity, become part of the Court’s functioning staff, and this was deemed unworkable for the present time.

The Juvenile Calendar in Ada County is not only a completely separate department of the court, but it also operates in a different building some distance from the otherwise consolidated operations of a new courthouse and has its own judges and staff. Thus from a purely practical viewpoint, the handling of juvenile cases stemming from the families involved in the Family Violence Court was also not presently feasible. In lieu of assuming part of the juvenile calendar, which was discussed but found unworkable in our circumstances, the judge from the Family Violence Court—already having a close working and personal relationship with the two juvenile court judges—opted to contact those judges by telephone and coordinate any juvenile matters that were pertinent to the operation of the Family Violence Court. This informal coordination was welcomed by the juvenile judges and has been a positive element of the new court’s workings in spite of the lack of direct inclusion of the juvenile cases.

## **V. Narrowing the Focus: The RMQIC Grant Project**

### *A. The Application Process and the Scope of the Grant*

Shortly after the Family Violence Court got underway, the court and staff received a request for proposals for a grant funded by the United

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59. Idaho’s child protection system and its interface with federal law is described in detail in ELIZABETH B. BRANDT, ET AL., *THE IDAHO CHILD PROTECTION MANUAL* (2002), available at <http://www.isc.idaho.gov/childapx.htm>.

States Department of Health and Human Services<sup>60</sup> through the Rocky Mountain Quality Improvement Center (RMQIC).<sup>61</sup> The RMQIC sought to fund innovative programs or practice methods in their region—which included Arizona, Colorado, Idaho, and Wyoming—that were designed to strengthen families struggling with child abuse or neglect and substance abuse issues. The programs also had to be involved with or able to receive a referral from the local Child Protection Agency which in Idaho's case is the Department of Health and Welfare Division Family and Children Services.<sup>62</sup> The goals of the RMQIC were to financially support, evaluate the effectiveness of, and provide technical support to the innovative programs or practices chosen, as well as to establish a networking relationship between child protection professionals and others, and share the findings of the projects.

During the initial stages of the Family Violence Court, the professionals and court staff began to see a recurring scenario of families struggling not only with domestic violence, but also with issues of child abuse or neglect, and substance abuse. Further, these families were either currently involved with the Department of Health and Welfare or the subject of an investigation by the Department. To complicate the situation, at the time of application for the grant, there was a lack of communication between the courts and the Department of Health and Welfare regarding domestic violence cases, as well as the absence of an agency or legal arena designed to assist these families with the multiple issues.

Research confirmed the anecdotal observations of the FVC professionals and staff: "Experts estimate that 5 million children per year witness an assault on their mothers," and that "[m]ultiple studies have demonstrated that men who abuse their partners are far more likely than other men to abuse children," using physical, sexual, or psychological abuse.<sup>63</sup> In addition, links between substance abuse and child maltreatment have been found,<sup>64</sup>

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60. For more information regarding the Department of Health and Human Services programs and grant funding, see <http://www.hhs.gov>; <http://www.acf.hhs.gov>. See also <http://www.acf.hhs.gov/programs/cb/initiatives/qualityic.htm>.

61. For more information about the Rocky Mountain Quality Improvement Center, see [http://www.americanhumane.org/site/PageServer?pagename=pc\\_best\\_practice\\_rmqic\\_homepage](http://www.americanhumane.org/site/PageServer?pagename=pc_best_practice_rmqic_homepage).

62. For more information on the Idaho Department of Health and Welfare, see <http://www.healthandwelfare.idaho.gov>.

63. LUNDY BANCROFT, *WHY DOES HE DO THAT: INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN* 245 (2002).

64. Lenette Azzi-Lessing & Lenore Olsen, *Substance Abuse-Affected Families in the Child Welfare System: New Challenges, New Alliances*, 41 *Social Work* 1, 15-23 (1996); An-Pyng Sun, *Helping Substance-Abusing Mothers in the Child Welfare System: Turning Crisis Into Opportunity*, 81(2) *FAMILIES IN SOCIETY: THE JOURNAL OF CONTEMPORARY HUMAN SERVICES*, 142-151 (2000).

as well as links between substance abuse and domestic violence.<sup>65</sup> In addition:

A recent survey of public child welfare agencies conducted by the National Committee to Prevent Child Abuse found that as many as 80 percent of child abuse cases are associated with the use of alcohol and other drugs, and the link between child abuse and other forms of domestic violence is well established. Research also indicates that women who abuse alcohol and other drugs are more likely to become victims of domestic violence.<sup>66</sup>

Based on this recurring theme in the court and the research noted, application was made for the RMQIC grant. The Family Violence Court grant project proposed creating a case coordinator position through Idaho's previously established Family Court Services office. This new staff position would coordinate the services needed by the clients and network between the court, the Department of Health and Welfare, and other agencies involved. The purpose was to strengthen the response of the judicial system to families in crisis by using the authority of the court to achieve a highly collaborative service design.

Initially, it was proposed that the families would enter the project when seeking a protection order, therefore bringing them within the purview of in the Family Violence Court, and then an assessment would be completed to identify if there were substance abuse and child maltreatment issues as well as to obtain the referral from the Department of Health and Welfare. The goals of the Family Violence Court grant project were 1) to keep families, including the children, safe while providing appropriate social service referrals, community support, and protection through the judicial process; 2) to decrease the risk of duplicating or fragmenting services between the court and social service agencies; 3) to improve services to families with children by providing a comprehensive and collaborative treatment or service plan focused on the needs of the children and the needs of the family system; 4) to monitor treatment compliance and accountability through active case management and coordination; and 5) to strengthen child safety and improve family well-being through early identification of all issues contributing to the family's distress.<sup>67</sup>

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65. NEIL JACOBSON & JOHN GOTTMAN, WHEN MEN BATTER WOMEN: NEW INSIGHTS INTO ENDING ABUSIVE RELATIONSHIPS, 39 (1999); Kenneth Leonard & Howard Baine, *Alcohol and Marital Aggression in a National Sample of Young Men*, 7(1) J. OF INTERPERSONAL VIOLENCE, 19-30 (1992).

66. PATRICIA ANNE FAZZONE ET AL., SUBSTANCE ABUSE TREATMENT AND DOMESTIC VIOLENCE 3 (2002).

67. For more information on the Ada County Family Violence Court grant project and other projects funded by RMQIC, see [http://www.americanhumane.org/site/PageServer?page-name=pc\\_best\\_practice\\_rmqic\\_projects](http://www.americanhumane.org/site/PageServer?page-name=pc_best_practice_rmqic_projects).

*B. The Development and Progress of the  
Family Violence Court Grant Project*

The Family Violence Court was awarded the three-year grant at the beginning of 2003. Once the FVC received the grant, immediate program development took place to begin the process of meeting the five goals laid out in the application process. Within the first six months, the case coordinator was hired and trained, procedures were established, a meeting with community providers took place to establish a network of referral sources, a monitoring process and billing procedure were developed, "mock" and the subsequent first multidisciplinary team meetings were held,<sup>68</sup> and the first referrals were received from the Department of Health and Welfare. Additionally, the first assessments and treatment plans were completed. Over time, the exit interviewing process has been developed and the relationships with the community continue to grow.

Through the grant project the court has both expanded existing partnerships and created new alliances. The FVC project staff began by conducting meetings with the Department of Health and Welfare to discuss the referral process and project collaboration, and continued meeting with the Department regarding project eligibility and services available to families. The process of collaboration with the Department of Health and Welfare has been very successful and both agencies have a greater understanding of each other's mandates, reporting definitions and requirements.<sup>69</sup>

Further, in the initial development of the grant project the project staff met with Ada County Misdemeanor Probation staff, substance abuse and domestic violence evaluators and treatment providers, and other professionals who provide parenting and counseling services who support the grant project. Through this process the project staff informed community providers about the project and needed services, established a system of collaboration, and discussed the procedures for billing and reporting. During the project the staff has performed many site visits to providers' offices or facilities to meet staff, tour facilities, and gather additional information regarding services and program methods provided. In addition, the project has encouraged additional collaboration within the court system including cooperation with the public defender's office, the local bar association, and the criminal, juvenile, and civil judges. Cooperation between all of these agencies has greatly expanded with the grant project.

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68. Participants in the team include the Department of Health and Welfare, local victim advocacy agencies, Family Court Services staff, treatment providers, probation officers, mental health providers, victim witness coordinators, and other community agencies involved in the process.

69. See NATIONAL CENTER ON SUBSTANCE ABUSE AND CHILD WELFARE, FRAMEWORK AND POLICY TOOLS FOR IMPROVING LINKAGES BETWEEN ALCOHOL AND DRUG SERVICES, CHILD WELFARE SERVICES AND DEPENDENCY COURTS, 7 (2003).

In addition, over these first two years of the project the staff and the judge have conducted several presentations at local and statewide conferences and professional meetings and attended these conferences and meetings to inform the public and other professionals regarding the grant project. The staff also created a brochure and other materials to explain the Family Violence Court project and grant project for professionals in the community.<sup>70</sup>

At this point in the project, two major changes have occurred, both related to how the clients become eligible for the program. These changes both occurred because the initial criteria was restricted such that the rate of referrals and the timing of involvement in the Family Violence Court often led to clients not being eligible. The first change to occur was expanding the criteria for entrance into the program so that clients could enter the program through any component of the Family Violence Court, whether it be through a criminal case, a civil protection order case, or a domestic relations case.

The second criteria change was related to the referral by the Department of Health and Welfare. Initially, all participants had to receive a referral from the Department of Health and Welfare and now the criteria to participate has been opened to include clients involved in the Family Violence Court who have children at risk of child maltreatment or children who have experienced past child maltreatment. Additionally, the clients must have substance abuse issues. This expansion of the criteria is leading to an increased number of participants receiving the services and support of the project, and bringing the project closer to the original number of anticipated clients.<sup>71</sup>

### *C. Client Services Resulting from the Grant*

The Family Violence Court Grant Project allows the court to provide case management of services and treatment to families who participate in the project, as well as funding for these services. Grant funded services that the families might receive include domestic violence evaluation and treatment, substance abuse evaluation and treatment, and parent education. Other services the families are eligible for within the project include safety planning meetings<sup>72</sup> and effective co-parenting education.<sup>73</sup> Once a

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70. Copies may be obtained by contacting Family Court Services, 200 W. Front St. #4128, Boise, ID 83702 or (208) 287-7600.

71. The initial grant proposal estimated that the Family Violence Court project was projected to serve thirty families with a full range of services each year. Most families do not receive funded grant services but still receive the inherent benefits of the new court.

72. The purpose of this meeting is to address safety concerns regarding domestic violence, child safety, and to develop and Individualized Family Safety Plan.

73. A developed curriculum was adapted from an existing Family Court Services program.

family is involved in the project the case coordinator identifies the family's needs though a series of assessments and evaluations, develops a treatment plan,<sup>74</sup> and coordinates the services including making appropriate referrals for treatment.

As a component of participation in the Family Violence Court grant project, both parents are recommended or court ordered to the initial intake and assessment. Parents do not need to be married or in the same household, and one parent's participation is not dependent on the other's. In addition, stepparents and significant others living in the household with a parent may be eligible to participate in the grant project. Consistent with the general policies of the FVC, parents who have pending criminal charges may not participate in the assessment process until their criminal case is resolved unless they voluntarily request to do so, with the advice of their legal counsel. A much larger number of parents than anticipated who still had unresolved criminal cases have chosen to participate.

The purpose of the intake and assessment process is to identify the client's needs, collect data for the evaluation and provide recommendations to the court. The assessor, or case coordinator, interviews both parents at separate times, to decrease potential unnecessary conflict in order to obtain information related to the family. The assessor is an objective third party in the court process and will not side with either parent or stepparent. During the intake and assessment the case coordinator explains to the families that the Family Violence Court grant project is a voluntary program and families are allowed to withdraw from the project at any time or can choose not to participate in the project. If parents choose not to participate there is no legal penalty. Services, funding availability, and the evaluation process are also explained to the participants at this time.

After interviewing both parents, the assessor submits a report to the court with recommendations to enhance family functioning, providing alternatives for resolving issues, and improving parent and child safety. As a result of the report and recommendations the judge may order evaluations for the parents. The case coordinator provides referrals for the grant participants regarding the recommended or court ordered evaluations. Additionally,

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The primary purpose of this education is to offer information about ways to minimize potentially negative impacts of separation, domestic violence, divorce, and conflict on the child(ren). The information offered is not legal advice, but rather psychosocial education based on current research in the areas of child development, children of divorce, and the impact of conflict on children.

74. Treatment plans focus on the individual parent's and family's strengths, identified concerns, goals, and any barriers or challenges to achieving those goals. Treatment plans are developed with the family and the multi-disciplinary team during a Treatment Planning Meeting. A comprehensive treatment plan incorporates the goals and requirements of all the agencies involved in the family (i.e. probation, child protection services, and family law court).

the intake, assessment, completed evaluations, and all the recommendations will guide the family's treatment plan.

Many clients with substance abuse issues suffer from related health issues, mental health disorders, numerous social problems, and are involved with the criminal justice system. Research suggests that clients who receive support for these additional problems experience improvements in family functioning.<sup>75</sup> The Family Violence Court case coordinator works directly with the family to provide resources, support, and facilitate services outlined in the treatment plan during the project. The case coordinator has contact with individual participants as often as needed or until they have been discharged from the program. In addition, the case coordinator has frequent contact with providers to monitor participants' progress in treatment.

The case coordinator supports families through the court process and even after their court case has been resolved to serve as the family's contact person and a liaison between providers, community service agencies, and the Department of Health and Welfare. In addition, the grant project utilizes a multi-disciplinary team approach in managing and staffing these complex cases.

After a family completes, chooses to withdraw, or drops out of the Family Violence Court grant project, the case coordinator conducts an exit interview with the participants. The exit interview is designed to identify any remaining concerns and recommendations the case coordinator may have. The coordinator and the family members collaborate to construct a discharge plan which addresses these concerns. Data is also collected at this point for evaluation purposes. After the exit interview, the staff contacts participants intermittently for a period of twelve months for follow up, support, and to gather information related to the evaluation process. This information is held confidential and will not be used against the participants in future criminal court proceedings.

#### *D. Evaluation of the Grant Project*

The evaluation of the grant project is an ongoing process with the families and staff that examines the outcomes for each family with regards to child safety, permanency, family well-being, parent safety, and the use of substances. In addition, this comprehensive evaluation will conduct a complete literature review plus an outcome and a system change analysis to determine the overall impact of the grant project. Throughout the project, data will be collected through a series of assessment, pre and post

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75. HARVEY A. SIEGAL, COMPREHENSIVE CASE MANAGEMENT FOR SUBSTANCE ABUSE TREATMENT 1-2 (2002).

tests,<sup>76</sup> input from providers, input from the referral source, exit interviewing and follow up. The data collected will be entered into a database especially designed for the evaluation of the grant project. All participants in the grant process will sign an informed consent form and release of information for the project. The project will also utilize a comparison group for the purpose of the evaluation. Data for the comparison group will be collected from the Department of Health and Welfare, Family Court Services, and Ada County Misdemeanor Probation in a nameless, confidential fashion.

Two professors from Boise State University are contracted to conduct the evaluation. The evaluation will be guided by the project logic model in which the underlying assumption of the project is that assessment, comprehensive services, and a streamline delivery process will help strengthen and support families who have problems with substance abuse and child maltreatment when they come into contact with the judicial system as a result of family violence. The evaluation process, report, and manual for the project are anticipated to be completed by June 2006.

## **VI. Overall Evaluation of the Integrated Family Violence Court**

### *A. General Evaluation Process Underway*

As noted above, the Family Violence Court has contracted for an independent evaluation of the new court process and its effectiveness. That measurement will assess whether the projects has met its mission, which has been: 1) to ensure the safety of the victims and their children, 2) to hold offenders accountable, and 3) to run the court in a prompt and more efficient manner. Professional efforts are underway to operationally define and chose the measures for this evaluation. In addition, measurements will be made to see if the goals of the court have been met. They are 1) to promote victim and child safety through effective coordination of information and services, 2) to promote accountability of offenders, 3) to reduce the number of overlapping and inconsistent orders, 4) to provide consistent orders for evaluations, treatment, and other services, 5) to provide complete and full due process for the accused, 6) to provide expeditious resolution of cases, and 7) to provide the court with complete and accurate information concerning companion cases of the family and the criminal history of the parties.

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76. Pre and Post tests include the ICPS-Family Functioning Scale adapted by P. Noller, North Carolina Family Assessment Scale (NCFAS) is a family functioning and child well-being measurement, the Spousal Assault Risk Assessment (SARA), a clinical checklist of risk factors for spousal assault, and Garrity and Baris parental conflict scale, used from CARLA B. GARRITY & MICHAEL A. BARIS, *CAUGHT IN THE MIDDLE: PROTECTING THE CHILDREN OF HIGH-CONFLICT DIVORCE* 43 (1994).



It is expected that through the Family Violence Court there will be a reduction in inconsistent orders and overlapping services and a reduction in the number of times a family has to appear in different courts and on different days. In addition, the court's calendar should expedite the cases by decreasing the time between and the number of hearings. The Family Violence Court evaluation plan will complete a process of file review on a random sample of civil and criminal cases involved in the new court design, as well as a comparison group.

Inherent in this evaluation process is the question of whether or not intervention systems really matter in the universe of domestic violence in our society, and whether or not courts and the systems that revolve around the legal system matter as they develop therapeutic and problem solving methods to deal in nontraditional ways with domestic violence cases.

Some have suggested it really doesn't matter.<sup>77</sup> To the contrary, one of the most renowned experts on the matter draws a different conclusion. Edward Gondolf clearly states (regarding treatment programs and intervention systems—including courts that specifically make and follow up on referrals): “The major implication is that *the system matters*. Batterer programs outcome is, for instance, likely to be improved with swift and certain court referral, periodic court review or specialized probations surveillance, and ongoing risk management.”<sup>78</sup>

Our project specifically included probation personnel and treatment providers in the working group so that we could at least make certain that our attempts to improve offender treatment was given attention in addition to improving safety for victims. Indeed, our group felt that the two objectives were, for the most part, one and the same. Hence, effectiveness of offender treatment programs has been of continuing concern to this project. Again, Gondolf states:

Our analysis of a program effect suggested a relatively moderate-sized effect for the programs involved in our multi-site evaluation. Attending battering counseling as opposed to dropping out appeared to reduce the probability of reassault according to a cross-tabulation, effect-size, logistic regression, and structured equation model. Thus, we might assume that the programs added something beyond the practice of men just being arrested and put on probation.<sup>79</sup>

We have felt that in order for our project to have meaning and validity, it needed to address the effects of domestic violence in a holistic manner, looking at families, not just actual victims battered, nor just at the offender.

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77. Robyn Mazur & Liberty Aldrich, *supra* note 51, at 41.

78. See EDWARD W. GONDOLF, BATTERER INTERVENTION SYSTEMS (2004).

79. *Id.* at 160.

## *B. Perceived Benefits and Challenges of an Integrated Court*

### 1. BENEFITS OF THE FAMILY VIOLENCE COURT

Although the hard evaluation data yet to be generated will provide a more objective analysis, there have been an abundance of success stories that reinforce us in our efforts to continue with this project. Over the last two years a mother involved in the project had her first drug-free baby out of three children she has borne. Another family has completed two parent education classes and substance abuse treatment programs while both parents reunited, found jobs, moved to a bigger home for their family of four children, and report that their children are progressing well even though they entered the project with significant mental health issues.

Two families participating in the project with long histories of methamphetamine use have been clean and sober for over twelve months and remain involved in both domestic violence batterer treatment and substance abuse counseling. While we certainly have had recurrences of assault and battering, probation staff reports that the compliance rate through this project far exceeds compliance rates in any other program. We anxiously await the objective measurement reports of the formal evaluations.

### 2. CHALLENGES FOR FAMILY VIOLENCE COURT

As with any developing project, there will continue to be challenges as we move forward. Staffing is critical, with only one judge and too few attorneys (both prosecution, defense counsel, and the family law bar) who are involved and/or assigned to the project. Integration of the Family Violence Court with the rest of the court system is an ongoing task. Addition of other important components, *e.g.*, child protection and juvenile calendars, must be addressed soon.

Maintaining good working relationships with all agencies that interface with the court, both public and private, is a task for all involved, and many players understandably still have different perspectives on what the project should look like and accomplish. Adequate funding is an ongoing challenge. Grant monies don't last forever. Support from both the state court system and the county being served by this project are not assumed for the future and must be sought, justified, and earned.

## *C. The Future of the Family Violence Court*

Given the effort already expended in creating and developing Ada County's Family Violence Court, and given its wide acceptance thus far by the general public as well as those groups with whom the court interacts regularly, it is the intent of the court to become even more well defined, and also to become permanent, always allowing adequate room

for improvement and restructuring as needed and as is possible. Once again, we “begin where we are,” or, stated another way, we “continue with what we have-”, and that philosophy permeates the functioning and development of the court. We hope only to become better at addressing the societal phenomena of domestic violence in an increasingly effective manner, and are mindful of both the progress already made, and that which is needed in the future.